

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION**

AMERICAN ADVISORS GROUP,

Plaintiff,

v.

BARBARA ANN ROBINSON, LYNN  
CARROL ROBINSON, JIMMY CARROL  
ROBINSON,

Defendants.

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CIVIL ACTION NO. 5:19-CV-00071-RWS-CMC

**ORDER**

The above-styled civil action was referred to United States Magistrate Judge Caroline M. Craven pursuant to 28 U.S.C. § 636. The Magistrate Judge issued a Report and Recommendation, recommending Plaintiff's First Amended Motion for Default Judgment as to Defendants Barbara Robinson, Jimmy Robinson and Lynn Robinson be denied without prejudice. Docket No. 39. The Magistrate Judge further recommended the Court set aside the Clerk's entry of default as to Barbara Ann Robinson (Docket No. 10). *Id.*

First, the Magistrate Judge found that Plaintiff American Advisors Group ("Plaintiff" or "AAG") could not show that entry of default as to Barbara Robinson was valid because such default was based on the original complaint prior to Plaintiff filing its First Amended Complaint ("FAC"). Docket No. 39 at 7. Further, the Magistrate Judge determined that, even if the Clerk's entry of default was valid, Plaintiff failed to show Barbara Robinson was not incompetent.<sup>1</sup> *Id.* at 8–9 (noting Plaintiff's evidence indicates Barbara Robinson is suffering from dementia but does

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<sup>1</sup> On January 13, 2020, Plaintiff filed a motion requesting the Court appoint a guardian ad litem to represent Barbara Robinson's interests in this case. Docket No. 40. The motion is pending before the Magistrate Judge.

not have a legal guardian). The Magistrate Judge concluded that, as to Barbara Robinson, Plaintiff had not established the procedural requirements for entering default and default judgment would be improper at this time.

Turning to Jimmy Robinson and Lynn Robinson, the Magistrate Judge noted it is within the Court's discretion to deny entry of default judgment when other parties are litigating the merits of the action. *Id.* at 9. However, finding that entry of default judgment against Jimmy and Lynn Robinson could, at this time, prejudice co-defendant Barbara Robinson, the Magistrate Judge recommended the Court deny the amended motion for default judgment without prejudice. *Id.* The Magistrate Judge concluded as follows:

Should AAG demonstrate it has properly served a copy of the FAC on Barbara Robinson and that Barbara Robinson has failed to plead or otherwise respond to the FAC, AAF may elect to file a further motion for Clerk's entry of default under Rule 55(a) with respect to Barbara Robinson, and, subsequently in compliance with the requirements of Rule 55(b), file a motion for default judgment with respect to the FAC as to all defendants. If AAG elects to file a further motion for default judgment with respect to the FAC, it shall include a complete and well-supported justification for the relief sought. Rather than include any request for attorney's fees in any refiled motion for default judgment, AAG shall file a separate motion for attorney's fees contemporaneously with any re-filed motion.

*Id.* at 10.

No objections have been filed. Accordingly, Plaintiff is not entitled to *de novo* review by the District Judge of the findings, conclusions and recommendations and, except upon grounds of plain error, it is barred from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Servs. Auto. Assoc.*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc).

Nonetheless, the Court has reviewed the motion and the Magistrate Judge's report and agrees with the Magistrate Judge's report. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) ("[T]he statute permits the district court to give to the magistrate's proposed findings of fact and

recommendations ‘such weight as [their] merit commands and the sound discretion of the judge warrants . . . .’ ”) (quoting *Mathews v. Weber*, 23 U.S. 261, 275 (1976)). There being no grounds of plain error or manifest injustice, the Court adopts the Magistrate Judge’s report (Docket No. 39) as the opinion of this Court. Accordingly, it is hereby

**ORDERED** that Plaintiff’s First Amended Motion for Default Judgment as to all defendants (Docket No. 37) is **DENIED WITHOUT PREJUDICE TO REFILE**. It is further

**ORDERED** that the Clerk’s Entry of Default as to Barbara Robinson (Docket No. 10) is set aside.

**So ORDERED and SIGNED this 30th day of March, 2020.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE